



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201235022**

Release Date: 8/31/2012

Date: June 8, 2012

UIL: 501.03-00

501.03-20

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: April 25, 2012

UIL: 501.03-00
501.03-20

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

State =
Date1 =
Date2 =
Country =
Year1 =
Year2 =
University =
X1 =
X2 =
Website =

Dear

We have considered your application for recognition of exemption from Federal income tax under § 501(a) of the Internal Revenue Code. Based on the information you provided in your application and subsequent correspondence, we have concluded that you do not qualify for exemption under § 501(c)(3). The basis for our conclusion is set forth below.

FACTS:

You are a not-for-profit corporation incorporated in State. You applied for recognition of tax exempt status under section 501(c)(3) of the Internal Revenue Code ("Code") and requested public charity status as a church under section 170(b)(1)(A)(i) of the Code. Your letter on Date2 indicates, however, that you will accept exemption as a religious organization and public charity status under 170(b)(1)(A)(vi) or 509(a)(2).

You believe that "each individual person or household is a church that God plants into the world. Each family is a mission and a church within our Church structure. Accordingly, there are no general worship or regularly scheduled worship services on Sundays other than the ones each member conducts at home." You have less than twenty members in fewer than five families spread throughout the country. These families conduct services on their own, and seek advice

via email from your pastor, who lives in Country. Your pastor and evangelist, who are both paid, travel to the US four times a year. All of your members meet in one place two of those times, while a majority of your members meet the other two. Each member pays his own way to the site, which moved around to four different cities throughout year. Host members often provide housing and food for the entire group during these visits. The schedule of activities for these service meetings dedicates seven of sixteen waking hours to prayer and worship services with the remainder of the time spent in social and dining activities. These quarterly worship services constitute approximately twenty percent of your activities.

The narrative response provides that you, "seek to train [your] members to be intercessors for Christ." You later explain that an intercessor is someone who prays to God on someone else's behalf. You go on to state that your main goal is prayer for unbelievers and that intercession is, "a prayer where we bring ourselves to a place of a sinner and confess their sins on their behalf." You have sponsored mission trips to China, United Arab Emirates, Norway, Tibet, Mongolia, and other parts of the world to minister and intercede for non-Christian sectors around the globe. You intend to make such trips to every country in the world.

Your pastor and evangelists represent you on your mission trips, which last five to ten days each. They are often accompanied by one of your members, different people on different trips. The main activity taking place during these trips is a "Joshua Walk" where your members walk around popular tourist locations and silently pray for the people in that locality. Your activities depend on where the trip is going. For overseas trips where you are connected to cell groups, the missionaries will provide ministry services for these groups that generally must remain hidden due to the political climate in the area. Your missionary activities constitute approximately sixty percent of your activities.

In addition to your quarterly congregations and missionary work you also provide financial assistance to individuals. An attachment to your Form 1023 states that your members resolve to provide for the needs of your members. In year1 and year2 you provided financial assistance for a student studying at University. You provided no financial support until she arrived in the US, and you provide the support because she is otherwise unable to work since she is here on a student visa. You paid \$x1 to this student in year2. You also paid \$x2 to another individual in China.

You consider funds provided by you to be scholarships. You grant such funding to members and non-members "as God leads you." You have no specific programs for financial aid but state that you will grant scholarship funds only to individuals whose expenditures exceed their income on a monthly basis. These individuals must also seek out further employment to increase their income, and they must be self-sufficient within six to nine months. This requirement is removed for students who are unable to gain employment for one reason or another. Scholarship recipients are determined on a case-by-case basis with the amount dependent upon need and your budget. You do not advertise your scholarship program or seek out scholarship applicants and you have not received any applications. You represent that you do not provide scholarships to anyone related to members of your board.

You state that, "all [your] funding comes from individual members of the church. [You do] not receive any external contributions either from another Christian organization or government support. Also [you do] not receive contributions from the general public. [Your] contribution sources are [your] members and [you do] not solicit money from any other source or persons."

In your description of your organization, you provide a statement of faith, and state that you, “follow the traditional Christian form of worship.” You go on to provide more detail describing services familiar to Christians. You provide a code of doctrine that follows mainstream understandings of the Christian faith, especially amongst those who believe in a literal interpretation of the Bible. In describing your distinct religious history, you provide an historical account of the Presbyterian Church, in which your pastors are ordained, beginning with early Christianity citing website as your source. You provide an organizational chart of your religious hierarchy with Jesus at the top of the chart followed by those performing spiritual leadership such as pastors.

You state that you have regularly scheduled religious services that are performed by each individual family in their own homes. Additionally, your pastor conducts quarterly services with all members in one location. The quarterly meetings rotate among the homes of various members in different cities. These quarterly meetings consist of seven hours of prayer and worship services a day. The remainder of the time spent together is social, often revolving around meals.

You do not have an established place of worship, nor are you seeking one. Visits by the pastor often take place in members’ homes. You do not have a school for the religious instruction of the young. You do, however, conduct baptisms, weddings, funerals, etc. These ceremonial services take place at the quarterly services with the pastor, when needed.

You have a process to accept new members if they were to find you, but you make no effort to recruit new members. Your members may be associated with other denominations or churches. Your Date2 letter indicates that no current members are currently associated with another church, but that due to your format individuals are not discouraged from seeking ministry from other churches on the weeks when they are not meeting.

Your Articles of Incorporation do not contain the required purpose and dissolution clauses, or a prohibition of private benefit or inurement. You stated in your letter on Date1 that you are willing to amend your Articles to include both the purposes clause found in your Bylaws and an appropriate dissolution clause. In your Date2 letter you agreed to also include a clause prohibiting inurement or private benefit.

Your Board of Directors consists of three, unrelated individuals. Your Form 1023 and Date1 letter state that a fourth board member was related to one of the current three, but has since been removed. None of the board members are compensated and none of them is a pastor. All board members are your regular members. The paid pastor and evangelist are unrelated to each other or any of your board members or your members.

LAW:

Section 501(c)(3) of the Code provides that organizations may be exempted from tax if they are organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and “no part of the net earnings of which inures to the benefit of any private shareholder or individual.”

Section 507(d)(2) provides that a substantial contributor means any person who contributed or

bequeathed an aggregate amount of more than \$5,000 to the private foundation, if such amount is more than two percent of the total contributions and bequests received by the foundation.

Section 509(a)(2) provides public charity status for organizations that normally receive more than one third of their support from gifts, grants, contributions, membership fees, and receipts from related services while not receiving more than one third of their support from gross investment income or excess in unrelated taxable income over the tax imposed on such.

Section 4941(d)(1) defines self-dealing as the furnishing of goods, services, or facilities between a disqualified person and a private foundation as well as the payment of compensation by a private foundation to a disqualified person.

Section 4942(j)(3)(A) states that an "operating foundation" means any organization which makes distributions directly for the active conduct for purposes constituting the exempt function of the organization equal to its minimum investment income.

Section 4945(d) defines a taxable expenditure as any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g).

Section 4945(g) provides that (d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary.

Section 4946(a)(1) provides that a "disqualified person," with respect to a private foundation, includes a substantial contributor, as defined under section 507(d)(2), a foundation director or officer, and any spouse, ancestor, child, grandchild, great grandchild, and any spouse of a child, grandchild, or great grandchild of that contributor, director, or officer.

Section 1.170A-9(f)(6) of the Income Tax regulations ("regulations") states that contributions by any individual, trust, or corporation shall be taken into account only to the extent that the total amount of the contributions by any such individual does not exceed two percent of the organization's total support. In applying the two percent limitation all contributions made by a donor and by any person or persons considered in the donor's family for purposes of section 4946 shall be treated as made by one person.

Section 1.501(c)(3)-1(a)(1) provides that in order to be exempt under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the exempt purposes specified in that section.

Section 1.501(c)(3)-1(c)(1) states an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirement of this subsection, the burden of proof is on the organization to show that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.509(a)-3(f)(1) states that for determining whether an organization receives more than one-third of its support from permitted sources, all "gifts" and "contributions" from permitted sources, are includable in the numerator of the support fraction.

Rev. Rul. 56-262, 1956-1 C.B. 131, provides that an organization qualifies as a church only if its principal purpose or function is that of a church. An organization, whose activities include the conducting of religious services and/or the ministration to the sick or mentally retarded, may have characteristics of a church and a hospital, and an educational institution, but where the principal purpose or function of such an organization is not that of a church or association of churches, or an educational organization, or a hospital, it will not qualify under any of the classes of organizations set forth in section 170(b)(1)(A)(i), (ii) or (iii).

Rev. Rul. 56-304, 1956-2 C.B. 306, provides that an organization that is privately funded and operated can make distributions to individuals but that such an organization must maintain adequate records and case histories to show the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service.

Rev. Rul. 67-367, 1967-2 CB 188, holds that a nonprofit organization whose sole activity is the operation of a scholarship plan for making payments to pre-selected, specifically named individuals does not qualify for exemption from Federal income tax under section 501(c)(3).

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945), the court determines that, "the presence of a single . . . [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In Davis v. US, 495 US 472 (1990), the court denies the deduction as a charitable contribution payments from individuals to their children who are on mission trips for a recognized church. Payments to these children is not "for the use of" the church as the church has no control over the funds.

An organization's net earnings may inure to the benefit of private individuals in ways other than by the actual distribution of dividends or payment of excessive salaries. Founding Church of Scientology v. United States, 188 Ct. Cl. 490 (Ct. Cl. 1969), 412 F.2d 1197 (1969), cert. denied, 397 U.S. 1009 (1970).

In American Guidance Foundation, Inc. v. United States, 490 F. Supp. 304 (D.D.C. 1980) aff'd

in an unpublished opinion (D.C. Cir. 1981), the court upheld the IRS's determination that a nonprofit corporation failed to qualify as a "church" for purposes of exemption under section 501(c)(3). "Faced with the difficult task of determining whether or not religious organizations are in fact churches," the court explained, "the IRS has developed fourteen criteria which it applies on an ad hoc basis to individual organizations." That is, in applying the analysis to determine whether a religious organization may properly be characterized as a church, the Service considers whether the organization has the following characteristics:

- (1) a distinct legal existence
- (2) a recognized creed and form of worship
- (3) a definite and distinct ecclesiastical government
- (4) a formal code of doctrine and discipline
- (5) a distinct religious history
- (6) a membership not associated with any other church or denomination
- (7) an organization of ordained ministers
- (8) ordained ministers selected after completing prescribed studies
- (9) a literature of its own
- (10) established places of worship
- (11) regular congregations
- (12) regular religious services
- (13) schools for the religious instruction of the young
- (14) schools for the preparation of its ministers

The court added that no single factor is controlling in making this determination, although some are "relatively minor" in importance while others are of "central importance," including the existence of an established congregation served by an organized ministry, the religious education of the young, the dissemination of a doctrinal code, and the provision of regular religious services. At a minimum, the court concluded, a church includes a body of believers or communicants that assembles regularly in order to worship.

Church by Mail v. Commissioner, 765 F. 2d 1387 (9th Cir. 1985), aff'g 48 T.C.M. (CCH) 471 (1984), the Tax Court found it unnecessary to consider the reasonableness of payments made by the applicant to a business owned by its officers. The 9th Circuit Court of Appeals, in affirming the Tax Court's decision, stated: "The critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church."

In New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), the court, in denying an organization tax exempt status under § 501(c)(3), found that the organization was operated for personal rather than public benefits after reviewing the organization's promotional materials, actions, finances, and records of activities. The court, in reviewing whether the taxpayer had modified its activities, noted that gaps in the record may be resolved against the taxpayer since the burden is on the taxpayer to provide evidence that it meets the requirements of section 501(c)(3).

In Foundation of Human Understanding v. United States, 88 Fed. Cl. 203 (Fed. Cl. 2009), the court stated that the "associational test" is a threshold standard that a religious organization must satisfy in order to obtain church status. The court went on to determine

The extent to which Foundation brings people together to worship is incidental to its main function which consists of a dissemination of its religious message through radio and internet broadcasts, coupled with written publications. When bringing people together for worship is only an incidental part of the activities of a religious organization, those limited activities are insufficient to label the entire organization a church.

In Ginsberg v. Commissioner, 46 T.C. 47 (1966), the court determined that an organization was formed for private benefit where it was controlled and contributed to solely by those deriving direct benefit from its dredging of a river the benefits of which go predominantly to the property owners on the river.

Chapman v. Commissioner, 48 T.C. 358 (1967), held that an organization of dentist missionaries formed to spread the Gospel and improve dental care in foreign countries was a not a church, where the organization was not affiliated with any church, drew its members from various Christian denominations, and did not attempt to promote membership in any particular Christian denomination. A concurring opinion notes that the organization failed to bring people together as the principal means of accomplishing its religious purpose.

In Church in Boston v. Commissioner, 71 T.C. 102 (1978), the court denied exemption to an organization for failure to develop criteria for disbursements of grants or to keep adequate records of each recipient. Such failures were determined to potentially lead to abuse thus representing a non-exempt purpose.

est. of Hawaii v. Commissioner, 71 T.C. 1067 (1979), the Tax Court held that compensation need not be unreasonable or exceed fair market value to be private benefit, stating “[n]or can we agree with petitioner that the critical inquiry is whether the payments made to International were reasonable or excessive. Regardless of whether the payments made by petitioner to International were excessive, International and est, Inc., benefited substantially from the operation of petitioner.”

In Bubbling Well Church of Universal Love v. Commissioner, 74 T.C. 531, 534 (1980) aff’d, 670 F.2d 104 (9th Cir. 1980), the Tax Court explained that an organization that is closely-controlled by related individuals must clearly demonstrate that private interests will not be served and that net earnings will not inure to the benefit of insiders. Given the control over the petitioner organization by related individuals, the court could not conclude “from the information in the administrative record that part of the net earnings did not inure to the benefit of the [controlling] family or, stated another way, that petitioner was not operated for the [family’s] private benefit.” In reaching this conclusion, the court noted that the situation:

. . . calls for open and candid disclosure of all facts bearing upon petitioner’s organization, operations, and finances so that the Court, should it uphold the claimed exemption, can be assured that it is not sanctioning an abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that petitioner fails to meet the requirements of section 501(c)(3).

74 T.C. at 535.

In The Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916 (1986), an organization with only two members that pursued a policy discouraging membership was held to not be a church since it failed to serve any associational role for purposes of worship. The court also denies exemption due to the private benefit of the church saying, "Prohibited inurement is strong suggested where an individual or small group is the principal contributor to an organization and the principal recipient of the distributions of the organization, and that individual or small group has exclusive control over the management of the organization's funds." Id. at 927.

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 T.C.M. (CCH) 905 (1943), a trust established for the benefit of an aged clergyman and his wife was a private trust and not an exempt activity despite the fact that the two individuals served were needy.

In Wendy Parker Rehabilitation Foundation, Inc. v. Commissioner, 52 T.C.M. (CCH) 51 (1986), the organization was created by the Parker family to aid an open-ended class of "victims of coma." However, the organization stated that it anticipated spending 30 percent of its income for the benefit of Wendy Parker, significant contributions were made to the organization by the Parker family, and the Parker family controlled the organization. Wendy's selection as a substantial recipient of funds substantially benefited the Parker family by assisting with the economic burden of caring for her. The benefit did not flow primarily to the general public as required under section 1.501(c)(3)-1(d)(1)(ii) of the Regulations. Therefore, the Foundation was not exempt from federal income tax under section 501(c)(3).

First Church of In Theo v. Commissioner, 56 T.C.M. (CCH) 1045 (1989), held that an organization was not a church where its principal activity was publishing religious literature and it had no plans for membership, although it conducted some religious services. The organization did not have a formal creed, other than the Bible and a belief that God dwells in all people, no sacerdotal functions, no membership unassociated with other churches, no regular congregations or services, no established place of worship, no organized ministry for ministering to the congregation and no youth instruction. It was uncontested, however, that petitioner was an exempt religious organization.

ANALYSIS:

Organizations may be exempted from federal income tax if they are organized and operated exclusively for religious, among other, purposes. Section 501(c)(3). You are not currently organized exclusively for exempt purposes. Your Articles of Incorporation do not limit your purposes to one or more exempt purposes and do not dedicate your assets to an exempt purpose upon your dissolution. Sections 1.501(c)(3)-1(b)(1), (b)(4). However, you have stated that you are willing to add any necessary language upon request to do so.

In order to be recognized as exempt, an organization must also operate exclusively for exempt purposes. This means engaging in activities recognized as exempt, such as religious activities. The activities must benefit a charitable class of people or the public. Section 1.501(c)(3)-1(d)(1)(ii). An exempt organization must not be operated for the benefit of a specific or designated few, even if such individuals are needy. See Carrie A. Maxwell Trust, 2 T.C.M. (CCH) 905; Wendy Parker, 52 T.C.M. (CCH) 51.

You provided financial support to a foreign exchange student who is counted amongst your

members and to another student in Country. You do not currently have plans to provide support to any other individuals. In Wendy Parker, 52 T.C.M. (CCH) 51, the organization had plans to provide support to coma victims in general, but a large portion of its support was directed to a single individual. The organization in Wendy Parker was deemed to not serve public interests despite this planned funding to a larger group. Similarly, your efforts, though theoretically open to others, are predominantly provided to a small, private group.

Additionally, you do not have a formal program to provide such support. The guidelines by which you determine to extend scholarships require that recipients' parents have an income lower than that of the tuition, room, and board and that the recipient is unable to work. These stated guidelines are not sufficient, because they are not formal, objective, written guidelines by which a third party might judge the grant that was rewarded. The organization in Church in Boston, 71 T.C. 102, argued that its grants assisted the poor who were in need of food, clothing, shelter, and medical attention. The organization, however, was unable to furnish any documented criteria which would demonstrate the process of selecting a deserving recipient, the reason for specific amounts given, or the purpose of the grant. The organization's inability to provide these criteria led to the conclusion that the organization was operated for a substantial non-exempt purpose. The requirement for records and formal criteria for third party review is especially necessary for organizations that are operated and funded by a small group of individuals. Rev. Rul. 56-304, supra. This reasoning combined with the fact that any gaps in the record are construed against the taxpayer, New Dynamics, 70 Fed. Cl. 782, indicates that your grants represent a non-exempt purpose.

You also conduct mission trips whereby you pay for your pastor, evangelical, and certain members to go to international locales in order to intercede on the behalf of others. The individuals on the mission trip accomplish this task by visiting popular tourist destinations, walking around, and praying silently for the forgiveness of the sins of those around them. Mission activity is a long accepted religious activity. However, excessive private benefit is highly suggested when the same few persons are the principal contributors, and recipients of distributions of an organization, and especially when the same persons have exclusive control over the organization's funds. Church of Eternal Life, 86 T.C. at 927; Ginsberg, 46 T.C. 47. In these situations the organization must clearly show that private interests are not being served. Bubbling Well Church, 74 T.C. at 534. The critical question in such cases is not whether any payments are excessive, but whether the manner in which the organization is operated is carried on for the private benefit of a select group of individuals. See Church by Mail, 765 F.2d 1387; est. of Hawaii, 71 T.C. 1067. Given that you are governed by your members, all of your funds derive from your members, your members are small in number, you are not seeking extra members, and only your members and pastors benefit, through international and domestic trips, a substantial portion of your activities provide private benefit to your members, who are all disqualified persons. Section 4946(a)(1). The fact that these benefits go substantially to members who are your contributors also makes these payments similar to the scholarship payments to children of contributors found in Rev. Rul. 67-367, supra, that were deemed to be private benefit to a selected group of individuals. See also, Basic Bible Church v. Commissioner, 74 T.C. 846, 857 (1980). Payments for the benefit of contributors' children or payments for the travel expenses of contributors, as in your case, provide a substantial private benefit, rather than the public benefit required for organizations described in § 501(c)(3).

Some amount of private benefit is inevitable, and it is acceptable if an organization is operated primarily for public benefit. However, a substantial private benefit will prevent exemption. See

Better Business Bureau, 326 U.S. at 283. Here, your scholarships thus far constitute just over five percent of your funds, but this may rise as you have no guidelines capping expenditure amounts for such activities. Additionally, your operations consist of missionary trips to international destinations, including popular tourist destinations, for which you provide travel funds for your members, pastor, and evangelical. You are governed by a small, related board of persons who financially benefit from your activities. You have neither an independent board, nor the oversight of a church hierarchy. With the combination of these activities, your non-exempt activities appear to be substantial in nature, thus you have not met your burden of establishing that you will be operated for public, rather than private, interests.

CHURCH STATUS

Even if you were exempt, you would not qualify as a church as you initially requested. Religious purposes alone are not enough to establish an organization as a church. Church of Eternal Life, 86 T.C. at 924. In determining whether a taxpayer qualifies as a church, the IRS applies a 14 part test, which was upheld in American Guidance Foundation, 490 F. Supp. 304. The characteristics reviewed in making the determination of whether a religious organization is a church are:

- (1) a distinct legal existence
- (2) a recognized creed and form of worship
- (3) a definite and distinct ecclesiastical government
- (4) a formal code of doctrine and discipline
- (5) a distinct religious history
- (6) a membership not associated with any other church or denomination
- (7) an organization of ordained ministers
- (8) ordained ministers selected after completing prescribed studies
- (9) a literature of its own
- (10) established places of worship
- (11) regular congregations
- (12) regular religious services
- (13) schools for the religious instruction of the young
- (14) schools for the preparation of its ministers

In reviewing these characteristics, no single factor is controlling although some are “relatively minor” in importance while others are of “central importance.” Id. at 306. “A church’s principal means of accomplishing its religious purposes must be to assemble regularly a group of individuals related by common worship and faith.” Church of Eternal Life, 86 T.C. at 924. “At a minimum, a church includes a body of believers or communicants that assembles regularly in order to worship.” American Guidance Foundation, 490 F. Supp. at 306; see also Church of Eternal Life, 86 T.C. at 924; Chapman, 48 T.C. at 367 (Tannenwald, J., concurring).

To be sure, you meet several of the characteristics of a church. Meeting these criteria is not sufficient to establish you as a church within the meaning of § 170(b)(1)(A)(i), however. Despite these factors you do not meet the more important criteria for being a church. You do not assemble as a whole regularly, but meet quarterly with a majority of your membership. You also lack a place of worship, do not discourage members from maintaining membership in other churches, do not ordain ministers, do not have regular congregations or services, and do not have schools for religious instruction. Additionally, similar to the organization in Church of

Eternal Life, 86 T.C. 916, you do not seek out new members. You do have a process by which you will accept new members, but you make no effort to encourage or recruit additional members. A large majority of your “associational” activities are conducted amongst single families or through email. As such, you are not a church under § 170(b)(1)(A)(i).

FOUNDATION STATUS

Exempt organizations are divided into two categories, according to the source of their revenue. Public charities are supported by a broad section of the public either through donations or fees (such as hospitals or universities). Private foundations are funded by a small group of people, often a family. When a small group has control over an organization and its money such as is the case for you, abuses are more likely. Therefore, Congress requires private foundations to follow some additional regulations.

Every organization that qualifies for tax exemption as an organization described in § 501(c)(3) is a private foundation unless it falls into one of the categories specifically excluded from the definition of that term. Churches are a specifically excluded category, but your failure to meet church status means you would have to qualify as a public charity through demonstration of broad public support. The test used to determine public support assures that an organization has at least a minimum percentage of broad-based public support. Sections 1.509(a)-3(f); 1.170A-9(f). Because all of your financial support comes from a limited number of people, most of whom are either directors or related to directors, even if exempt, you would have to comply with some of the private foundation regulations found in Chapter 42 of the Internal Revenue Code. These regulations may prevent you from conducting your activities in the manner you have described.

CONCLUSION:

You do not qualify for exemption since you are operated for private rather than public benefit. Even if you were to be an exempt organization you would not be a church or a public charity of any other nature. As a private foundation you would be subject to excise taxes that limit the types of activities you have stated you will perform.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done

so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations